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No. 130, Original

MAY 11 2000

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In The

Supreme Court of the United States

STATE OF NEW HAMPSHIRE,

Plaintiff,

v.

STATE OF MAINE,

Defendant.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

State of Maine

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QUESTION PRESENTED

Whether New Hampshire has met its burden to have this Court exercise its original jurisdiction to relitigate the location of a state boundary line.

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STATEMENT OF THE CASE

The boundary between Maine and New Hampshire is the middle of the main navigational channel – or thalweg – of the Piscataqua River, and has been so since at least 1740. New Hampshire's present claim to a boundary on Maine's side of the Piscataqua River was explicitly rejected by the highest tribunal in the land 260 years ago, a conclusion confirmed by New Hampshire itself as well as by this Court. *New Hampshire v. Maine*, 426 U.S. 363 (1976). In opposing New Hampshire's motion, Maine relies upon the undisputed history of the boundary and, in particular, New Hampshire's own official acts.

On the Maine side of the river, at the area in question, is the Town of Kittery, and on the other side of the river is the larger city of Portsmouth, New Hampshire. (This area is generally depicted on maps found in Maine's Lodging in Opposition to Motion for Leave to File Complaint (hereinafter "Maine Lodging") at Tabs 16 and 31-32). The islands to the north of the main channel on the Maine side of the river include Badger, Dennett's, Seaveys and Jamaica Islands. The Piscataqua River ends at the mouth of the harbor, between Newcastle Island in New Hampshire on the west and Gerrish Island in Maine on the east.

On the Maine side, as a result of fill placed over the years since 1866, Dennett's, Seaveys and Jamaica Islands became one island on which the Naval Shipyard is now located. The combined island is now often referred to as Seaveys Island. Maine Lodging, at Tabs 17 and 18. Bridges have been constructed only from the Maine mainland to these islands. (*See generally*, Maine Lodging, at

Tab 18). The only way one has ever been able to walk or drive to the Shipyard islands is through Maine.[1]

Maine was part of the Massachusetts colony. As is well documented elsewhere, in the early 18th century, a boundary dispute arose involving, *inter alia*, the northern boundary between New Hampshire and the Maine portion of Massachusetts. *New Hampshire v. Maine*, 426 U.S. at 366. When representatives of the two provinces could not negotiate a resolution, New Hampshire presented the matter to King George II. *Id.* The King appointed 20 members of the Provincial Councils of New York, New Jersey, Rhode Island and Nova Scotia to serve as Commissioners.

The Commissioners rendered a decision on September 2, 1737. The Commissioners fixed the northern boundary between New Hampshire and Maine as follows:

> [T]he Dividing Line Shall pass up thro' the mouth of Piscataqua Harbour & up the Middle of the River into ye River of Newichwannock (part of which is now called Salmon Falls) & thro' the Middle of the Same to the furthest head thereof . . .

19 N.H. Provincial Papers 391-92 (Albert Stillman Batchellor ed., 1891) (App. at 1a); *see also New Hampshire v. Maine*, 426 U.S. at 367.

New Hampshire filed exceptions to the Commissioners' decision on October 14, 1737, claiming:

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[1] The narrow water area between the Shipyard islands and Kittery has been called either Crooked Lane (A Plan of an Island Situated in Piscataqua River as a Navy Yard for the United States, June, 1800, (Maine Lodging, at Tab 19)) or Back Channel (New Hampshire Lodging, at 122 & 124).

> [T]he whole of that River and the Jurisdiction thereof hath Ever been in the Possession of this Province and never Claimed by the Massachusets . . .

2 Laws of New Hampshire (1913) at App. 772 (App. at 3a). New Hampshire further appealed the Commissioners' decision to the Privy Council in 1738, asserting:

> As to the northern Boundary, *the Commissioners Judgment directs the dividing Line to pass up the middle of Piscataqua River* and through the middle of Newichwannock River; but it's hoped that that is wrong. . . . *The Massachusets never possess'd, or claimed, the River itself, or any part of it,* neither under their old or new Charter; nor, in their Demand filed before the Commissioners, did they demand half or any part of the Rivers: So that it's humbly hoped this part of the Commissioners Judgment, which in consequence adjudges half of the River to the Massachusets without any Demand by, or any Title in, the Massachusets will be revers'd.

19 N.H. Provincial Papers 565, 596-97 (Albert Stillman Batchellor ed., 1891) (emphasis added) (App. at 4a-5a).

In response to New Hampshire's argument that it owned all of the river and the "parts" thereof, and not just half, Massachusetts replied:

> Possession and Enjoyment have been agreeable hereto, it being a known Truth, *that from Time immemorial the Province of Maine have and now do possess and receive Taxes constantly from all the Islands lying in that River, on that Side towards the Province of Maine;* and the Massachusetts aver in the most solemn manner, That New Hampshire have never in any one Instance exercised the Jurisdiction of the whole River, and *that the Province of Maine have constantly possessed and enjoyed the Islands all along their Side of the River –*

> *the Fact being, That all the Islands in the said River have been always considered and taxed as belonging to that Government they lay nearest to.*

19 N.H. Provincial Papers 601, 627-28 (Albert Stillman Batchellor ed., 1891) (emphasis added) (App. at 6a-7a).

The King referred the matter to the appeal committee of the Privy Council, which affirmed the Commissioners' determination of the Maine-New Hampshire boundary. 19 N.H. Provincial Papers 600 (Albert Stillman Batchellor ed., 1891) (App. at 8a). In 1740, the King "signed a decree accepting this recommendation and, employing the quoted language, thereby permanently fixed the Maine-New Hampshire boundary." *New Hampshire v. Maine*, 426 U.S. at 367. According to New Hampshire itself, in filings with this Court in 1975, the "middle of the river" "constituted the boundary between the states from and after the 1740 decree, and . . . *constitutes the boundary to this day.*" Exceptions and Brief of the Plaintiff, at 5, *New Hampshire v. Maine*, 426 U.S. 363 (1976) [Original No. 64] (hereinafter "Original No. 64") (emphasis added).

In 1741, Governor Benning Wentworth was issued a Commission and Instructions from the Crown regarding his responsibilities over the province of New Hampshire. The Commission described the colony as "bounded on the North Side by a Line passing up thro the Mouth of Piscataqua Harbour, and up the Middle of the River into the River of Newichwannock". Commission of Governor Benning Wentworth, 2 Laws of New Hampshire (1913), at App. 600 (App. at 10a). The Instructions relied upon by New Hampshire in its Motion, at 9 n.17, summarized the 1740 resolution, reiterating the boundary to be "up thro' the Mouth of the Piscataqua Harbour and up the Middle

of the River". Instructions to Governor Benning Wentworth, 2 Laws of New Hampshire (1913), at App. 608, 635 (App. at 11a).

New Hampshire theorizes that the Crown, Congress and/or New Hampshire somehow moved the boundary from the middle of the river to Maine's mainland. Motion, at 9-22. Maine notes that none of the material New Hampshire refers to mentions a new boundary line. Moreover, with a record of so vigorous a dispute over the boundary culminating in the 1740 decree, it is inconceivable that Massachusetts and Maine would have silently sat by during this alleged usurpation of the river and islands by New Hampshire. To the extent New Hampshire relies upon some of its regulatory actions in the area, Maine has regulated its side of the river and harbor as well, *inter alia*, for fishing (*see, e.g.*, Me. P&SL 1825, c. 337) (App. at 13a),[2] and for piloting (*see, e.g.*, Me. P&SL 1861, c. 72) (App. at 18a). In any case, New Hampshire's recently manufactured historical hypothesis is contradicted by undisputed historical fact.

In 1794, the Massachusetts General Court ordered all towns to survey their boundaries and produce a map thereof. Mass. Resolves, 1794, c. 101 (App. at 19a). Kittery did so, and included in its official map the Shipyard islands. Plan of the Town of Kittery by Actual Survey, November, 1794 (Maine Lodging, at Tab 20).

In 1800, the Navy purchased by deed Dennett's Island from William Dennett, Jr. The deed describes the island as "lying in Piscataqua River, in Kittery aforesaid,"

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[2] *See also* P&SL 1921, c. 33 (App. at 15a); P&SL 1874, c. 573 (App. at 16a); P&SL 1866, c. 136 (App. at 17a).

and was registered in York County, Maine. (Maine Lodging, at Tab 1.)

On May 7, 1821, Secretary of the Navy Smith Thompson, on behalf of the United States, requested that Maine cede jurisdiction of Dennett's Island to the federal government, describing "The United States Navy Yard, [as] situated upon Dennet's Island, on the east side of the Piscataqua River, and now within the limits of the State of Maine". Letter dated May 7, 1821, from Honorable Smith Thompson (Maine Lodging, at Tab 2). Maine did so in 1822, as follows:

> That there be, and hereby is, ceded to the United States the jurisdiction over Dennet's Island (so-called) on the East side of Piscataqua River, within the State of Maine, now belonging to the United States and occupied as a Navy Yard: Provided, however, That *the state shall have concurrent jurisdiction with the United States over said Island so far as that all civil and criminal processes* issued under the authority of the State may be executed on any part of said island, or in any building erected on the same; *and that all persons* residing thereon, not being in the military or marine service of the United States, *shall be holden to do military duty in the militia of this State* in the same way and manner as if jurisdiction had not been ceded as aforesaid.

Me. P&SL 1822, c. 112 (emphasis added) (App. at 23a).[3] In 1826, the Maine Legislature further consented to the United States erecting a bridge between the Navy Yard and the mainland. Me. Resolves, 1826, c. 29 (App. at 24a).

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[3] As provided in the cession of jurisdiction, non-military residents of Dennett's Island were required to serve in Maine's militia, as were residents of Seaveys Island. Kittery Town Records, June 13, 1836 (Maine Lodging, at Tab 3).

New Hampshire was well aware of the necessity of a state ceding jurisdiction to the United States for federal facilities, having done so on its side of the thalweg during this time. 1807 N.H. Laws, c. 57 (on Newcastle Island) (App. at 25a); 1791 N.H. Laws, c. 71 (on Newcastle Island) (App. at 27a). Maine also ceded Whaleback and Wood Islands to the United States near the mouth of the harbor on Maine's side of the thalweg. Me. P&SL 1827, c. 482 (App. at 30a). (The United States conveyed Wood Island back to Maine in 1973 (Maine Lodging, at Tab 4)).

The suggestion throughout New Hampshire's present motion that there has been an ongoing dispute over this boundary is contradicted by its own official reports, legislation, maps, and actions. On June 30, 1827, the New Hampshire Legislature resolved "to ascertain, survey, mark and renew the dividing line between this State and the State of Maine, in its whole extent." 9 N.H. Laws 701 (1827) (App. at 31a). Both states appointed two commissioners, and on November 19, 1828, the Commissioners filed their report with the Governor of New Hampshire. The New Hampshire Commissioners Report states at the outset that the 1737 decision of the King's Commissioners "determined respecting this line" that "the dividing line shall pass up through the mouth of Piscataqua Harbour; and up the middle of the river into the river Newichwannock," and that determination was approved by the Crown. Report of Commissioners Appointed to Settle the Line Between New Hampshire and Maine at 4 & 5 (Maine Lodging, at Tab 5). The Joint Report explained that the States' Commissioners deemed it unnecessary to commence the survey until they arrived north at the head of Salmon Falls River because the 1740 order had established the dividing line below. *Id.* at 13. Nowhere do the

Commissioners suggest any other boundary. New Hampshire, by Resolution dated December 16, 1828, resolved that the line designated by the Commissioners "shall, from and after the passage of this Resolution, be recognized as the true boundary line between the two States." 9 N.H. Laws 943 (1828) (App. at 32a).[4] Maine's Legislature also approved and accepted the report. Me. Resolves, 1829, c. 30 (App. at 33a).

In 1854, the Maine Legislature authorized the incorporation of the Seaveys Island Bridge Company to build and maintain a bridge from Seaveys Island to the Navy Yard on Dennett's Island. Me. P&SL 1854, c. 275 (App. at 34a). Kittery School District No. 8 acquired land for and built a schoolhouse on Seaveys Island. York County Registry of Deeds, Book 270, Page 64 and Book 301, Page 70 (Maine Lodging, at Tab 7). Although space limitations prevent a full review here of the tax records which show the islands to be taxed by Kittery and not Portsmouth, we highlight, by way of example, that in 1855, Seaveys Island residents petitioned Kittery to build a road on the island, which the town approved, resulting in the assessment of a highway tax "for making the new road on Seaveys Island (so called)." Kittery Town Records (1855, 1856, 1858) (Maine Lodging, at Tab 8).

In 1863, the State of Maine ceded jurisdiction of lands "on Seaveys Island in the Town of Kittery" to the United

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[4] New Hampshire Attorney General Pappagianis concluded in 1969 that New Hampshire and Maine accepted the "boundary line in the 1828 Report, specifically, that the Piscataqua River boundary between New Hampshire and Maine lies in the middle of the Piscataqua River." Opinion of New Hampshire Attorney General Pappagianis, at 5 (October 15, 1969) (Maine Lodging, at Tab 6).

States. Me. P&SL 1863, c. 198 (App. at 36a). No objection was raised by the State of New Hampshire to this cession. Opinion of N.H. Attorney General Pappagianis, at 5 (October 15, 1969) (Maine Lodging, at Tab 6). All of the deeds of the island to the United States (including one from the Kittery School District) describe the parcels as being in Maine, and are recorded at the York County Registry of Deeds in Maine (Maine Lodging, at Tab 9).

The Navy filled areas, resulting in Dennetts and Seaveys Islands becoming one. For the next 100 years, although the shipyard was sometimes referred to as the Portsmouth Shipyard, both Maine and New Hampshire consistently placed it in Kittery, Maine.[5] Official New Hampshire maps place the boundary in the middle of the river. *See, e.g.*, New Hampshire's Coastal Program, by N.H. Office of State Planning and N.H. Coastal Office (1990) (Maine Lodging, at Tab 21); Monitoring and Gaging Stations in Piscataqua River Basin, by N.H. Water Supply and Pollution Control Commission (1975) (Maine Lodging, at Tab 22); Eastern (Seacoast Region) Rockingham County, New Hampshire, prepared by the N.H.

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[5] We note that naval shipyards are not always named after the town in which they are located. For example, the Norfolk Naval Shipyard is actually in Portsmouth, Virginia, not Norfolk, and the New London Naval Submarine Base is in Groton, Connecticut, not New London. The Shipyard has used Portsmouth for its mailing address because, apparently, Portsmouth's post office has always been larger than that of Kittery. The United States Navy recognizes that, despite its mailing address, the Shipyard is in Kittery. "Federal Owned Real Estate Under the Control of the Navy Department," 1937 (Maine Lodging, at Tab 15) ("Location – Post Office, Portsmouth, N.H., but geographically in State of Maine.")

State Highway Department (1937) (Maine Lodging, at Tab 25).[6]

The "middle of the river" boundary is fully confirmed by Maine and Kittery governmental maps,[7] as well as other maps depicting the area.[8] Further, the Shipyard has been included in Maine's voting and census districts. *See, e.g.,* Maine House of Representatives District 1, prepared by Secretary of State Bill Diamond (8/93) (Maine Lodging, at Tab 11); U.S. Department of Commerce, Bureau of the Census, 1990, Boundary and Annexation Survey Map, Kittery, Maine (Maine Lodging, at Tab 33).

In 1969, Maine instituted a form of income taxation affecting New Hampshire residents who worked at the Shipyard in Maine. The controversy over the tax

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[6] We emphasize that this list represents a mere sampling of New Hampshire maps showing the boundary to be the middle of the river. *See also* Portsmouth, New Hampshire Street Map, by Portsmouth Planning Department (1972) (Maine Lodging, at Tab 23); Zoning Map of the City of Portsmouth, New Hampshire, prepared by Portsmouth Planning Board (January, 1951) (Maine Lodging, at Tab 24).

[7] *See, e.g.,* Maine Department of Transportation (1961) (Maine Lodging, at Tab 26); Town of Kittery, Maine, Zoning Map (1960) (Maine Lodging, at Tab 27); Town of Kittery Water Distribution (July, 1958) (Maine Lodging, at Tab 28); Maine Department of Transportation (1938) (Maine Lodging, at Tab 29); A Plan of the Town of Kittery by Actual Survey, November, 1794 (Maine Lodging, at Tab 20).

[8] *See, e.g.,* Kittery, Maine – N.H., SW/4 York 15' Quadrangle by the United States Geological Survey (1956) (Maine Lodging, at Tab 30); Map of the City of Portsmouth, in Portsmouth Directory, by W.A. Greenough & Co. (1883) (Maine Lodging, at Tab 31); Map of the City of Portsmouth, by F.W. Beers (1876) (Maine Lodging, at Tab 32).

prompted the New Hampshire Governor and his Council to inquire of their Attorney General:

> [I]s there, in your opinion, any question as to the geographic location of Seavey Island particularly whether or not it might lie within the borders of New Hampshire.

On October 15, 1969, New Hampshire Attorney General George S. Pappagianis rendered the opinion that:

> Seavey Island in the Piscataqua River, upon which the United States navy yard is located, is territorially a part of the State of Maine . . .

(Maine Lodging, at Tab 6). Attorney General Pappagianis found that the Crown in 1740 "rejected New Hampshire's claim to 'the whole of the River' and sustained the report of [the 1737 Commissioners] that the Piscataqua River boundary between New Hampshire and what is now Maine, was 'the middle of the River.' " *Id.* at 3. The New Hampshire Attorney General also noted that the Boundary Commission of 1828 correctly related that the dividing line was the middle of the river, concluding that:

> There is no doubt that . . . both New Hampshire and Maine, as states, accepted the boundary line described in the 1828 Report, specifically, that the Piscataqua River boundary between New Hampshire and Maine lies in the middle of the Piscataqua River.

Id. at 5. The New Hampshire Attorney General went on to state that not only did the two states formally and officially accept the 1740 determination as the correct boundary, but "neither state, as a province or a state, has controverted, since 1740, that Seavey Island upon which the United States Navy Yard is located is a part of the State of Maine." *Id.* Maine ceded jurisdiction of the island to the United States, and the Attorney General knew "of no objection raised by the State of New Hampshire . . . to

the underlying premise that Seavey Island is a part of Maine territorially." *Id.*[9]

On June 6, 1973, New Hampshire filed a motion for leave to file a complaint in this Court over the boundary between Maine and New Hampshire. The underlying dispute was the fishing jurisdictions of the states, with the area of major contention being the location of the lateral boundary line from the mouth of the harbor outwards to the Isles of Shoals. Thus, whether the boundary was in the "middle of the river" or on Maine's mainland, would have radically altered the division of territory between the states. In the complaint filed by Attorney General Warren Rudman, New Hampshire unequivocally averred:

> The description of the common boundary separating what are now the states of New Hampshire and Maine is contained in an Order in Council with respect to the Provinces of New Hampshire and Massachusetts Bay dated April 9, 1740, which provides, insofar as is pertinent here, '[t]hat the Dividing Line shall pass up thro' the Mouth of Piscataqua Harbour and up the Middle of the River . . . '

Complaint, at 2-3, *New Hampshire v. Maine*, Original No. 64.[10] New Hampshire correctly stated that the mouth of

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[9] Subsequently, in 1972, the new Piscataqua River Bridge was opened. The official joint Program of Events of New Hampshire and Maine had attached to it a map showing the boundary in the middle of the river. Program of Events, Opening of the New Piscataqua River Bridge, November 1, 1972 (Maine Lodging, at Tab 12).

[10] We have not reproduced the pleadings for Original No. 64 because they are contained in the Court's library and New Hampshire clearly possesses copies.

the Piscataqua River is also known "as Portsmouth Harbor in the vicinity of the Mouth of the River." *Id.* The State of Maine opposed, agreeing, however, that the dividing line was set in 1740. Brief in Opposition to Motion for Leave to File Complaint, Original No. 64 (July 31, 1973).

In its brief in reply, New Hampshire reiterated that the "legal basis for the common boundary between Maine and New Hampshire is the English Order in Council of April 9, 1740" which read in pertinent part that the "Dividing Line shall pass up thro' the mouth of Piscataqua Harbour and up the Middle of the River". Plaintiff's Reply Brief to Defendant's Brief Opposing Leave to File Complaint, at 2, Original No. 64. New Hampshire noted that "the mouth of Portsmouth Harbor (. . . is also the mouth of the Piscataqua River)." *Id.*

The Court granted the motion, and appointed as Special Master Tom C. Clark who encouraged the parties to work out a resolution. As a result of negotiations, the states executed a Motion for Entry of Judgment by Consent which confirmed that the boundary line between New Hampshire and Maine was fixed in the April 9, 1740 Order, and:

> The term[ ] 'middle of the river' . . . as used in [that] Order mean[s] the middle of the main channel of navigation of the Piscataqua River . . .

Motion for Entry of Judgment by Consent of Plaintiff and Defendant, at 2, Original No. 64 (Sept., 1974).[11]

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[11] The States' Motion to Amend this proposed judgment, of October 21, 1974, did not propose changes relevant to the present matter.

The Special Master rejected the resolution of the parties, and opined that "middle of the river" meant geographic middle rather than thalweg. Report of Tom C. Clark, Special Master, Original No. 64 (October 8, 1975). Because the geographic middle was more advantageous to it, New Hampshire abandoned its prior agreement with Maine, and embraced the Special Master's approach. Exceptions and Brief of the Plaintiff, Original No. 64. New Hampshire did file exceptions claiming that the Special Master was incorrect as to the location of the geographic middle at the mouth of the river, because he had improperly determined the middle from Whaleboat Island in Maine, rather than from Maine's mainland, thus resulting in the "middle" being 350 feet closer to New Hampshire. *Id.* at 8-10. New Hampshire, however, reiterated:

> The 'middle of the river,' . . . constituted the boundary between the states from and after the 1740 decree, and . . . constitutes the boundary to this day . . . [T]he present river boundary is the one established by the 1740 decree . . .

Id. at 5. New Hampshire filed a reply brief, reiterating, yet again, that the Royal Commission had properly decided in 1737 that the dividing line was the middle of the river. Reply Brief of the Plaintiff at 6, Original No. 64.

On June 14, 1976, the Court issued its decision fixing thalweg as the "middle," and concluding that the two states had appropriately located the already existing boundary. *New Hampshire v. State of Maine*, 426 U.S. 363 (1976). The Court found that the history concluding with King George II's 1740 decree established the boundary in the area, as expressly agreed to by both states. *Id.* at 367. The Court found its approval of the Consent Decree was a proper exercise of its judicial functions to ensure that

the proposal was well-founded in the evidence and the law.[12] This Court's decree stated:

> The term[ ] 'middle of the river' . . . as used in the [1740] Order, mean[s] the middle of the main channel of navigation of the Piscataqua River. . . .

New Hampshire v. Maine, 434 U.S. 1 (1977).

In reaction to continuing political dissatisfaction over Maine's income taxation of New Hampshire residents who work at the Shipyard, New Hampshire Attorney General Steven R. Merrill prepared a report to the Legislature on October 1, 1986, noting, in pertinent part:

> Most of the unfairness perceived by New Hampshire residents in Maine's new tax scheme stems from the fact that many New Hampshire residents who work *in Maine (for example, at the Portsmouth Naval Shipyard)*, receive very few benefits from Maine in return for their tax dollars.

Report of the Attorney General to the General Court, at 14 (October 1, 1986) (emphasis added) (Maine Lodging, at Tab 13).[13]

New Hampshire has now filed a motion for leave to file a complaint that the boundary is not in the middle of

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[12] An effort by New Hampshire's Legislature to supersede the Court's ruling was found to be without basis. *Opinion of the Justices*, 373 A.2d 647, 650 (N.H. 1977).

[13] In fact, the New Hampshire Attorney General proceeded to file an unsuccessful suit on behalf of a resident of New Hampshire who "earned income in Maine at the Portsmouth Naval Shipyard in Kittery," challenging the constitutionality of Maine's income taxation on due process, privileges and immunities, and equal protection grounds. *Stevens v. State Tax Assessor*, 571 A.2d 1195, 1196 (Me.), *cert. denied*, 498 U.S. 819 (1990).

the river but rather along Maine's mainland. Complaint at 49. New Hampshire, however, concedes in its Complaint that Badgers Island is in Maine, and, in the 1976 litigation, agreed that Fishing and Whaleback Islands are in Maine – all on Maine's side of the thalweg.

SUMMARY OF ARGUMENT

Because the boundary between Maine and New Hampshire has been officially determined to be the middle of the river on two previous occasions, this Court should decline New Hampshire's attempt to relitigate this matter. The State of Maine should not be put to the expense of reestablishing this boundary.

In managing its docket, this Court has broad discretion to avoid needless debate and unnecessary expense. This Court has the discretion to dispose of matters within its original jurisdiction "at a preliminary stage," in order to "as promptly as possible, reach and argue the merits of the controversy presented." *Ohio v. Kentucky*, 410 U.S. 641, 644 (1973). New Hampshire's present claim is without merit, and its motion should be resolved at this stage.

New Hampshire's claim falters at the starting gate because it is based upon a fundamentally faulty premise – that Maine's dominion over the Shipyard islands is founded on prescription. That has never been, and is not now, the position of Maine. As is clear from the recitation of undisputed facts above, the boundary was fixed 260 years ago, as repeatedly and fully confirmed by the two states.

Further, New Hampshire is foreclosed and estopped from disputing that the boundary is anywhere other than the middle of the river. It is undisputed that 260 years ago New Hampshire raised and lost this very claim, and

that New Hampshire has consistently and repeatedly confirmed the 1740 Decree. To succeed, New Hampshire would have to disprove, *inter alia*, the 1737 decision of the King's Commissioners, its own appeal therefrom, the 1740 Decree, the 1741 Commission and Instructions to New Hampshire's governor, Kittery's 1794 official governmental map, the deeds describing the Shipyard islands as being in Maine, the 1822 and 1863 cessions of the islands from Maine, the 1828 New Hampshire Boundary Commissioners Report, the numerous official New Hampshire and Maine maps, the 1969 Opinion of the New Hampshire Attorney General, the 1986 report of its Attorney General, and, most significantly, its 1970's pleadings before this Court and the clear language of this Court's decision and decree in *New Hampshire v. Maine*, 426 U.S. 363 (1976) and 434 U.S. 1 (1977). New Hampshire cannot meet its burden as a matter of law, mandating summary disposition at this stage of the proceedings without expenditure of further Court and state resources.

ARGUMENT

I. NEW HAMPSHIRE'S MOTION FOR LEAVE TO HAVE THIS COURT REESTABLISH THE BOUNDARY LINE SHOULD NOT BE GRANTED.

If there is ever a matter that should be disposed of at this stage of the proceedings, New Hampshire's present motion is the one. The Court construes Art. III, § 2, cl. 2, "to honor [its] original jurisdiction, but to make it obligatory only in appropriate cases." *Illinois v. City of Milwaukee*, 406 U.S. 91, 93 (1972). The Court's original "jurisdiction is of so delicate and grave a character that it was not contemplated that it would be exercised save

when the necessity was absolute." *Louisiana v. Texas*, 176 U.S. 1, 15 (1900), *quoted with approval* in *Mississippi v. Louisiana*, 506 U.S. 73, 76 (1992) (the Court has discretion not to accept original cases in actions between two states); *see also Illinois v. City of Milwaukee*, 406 U.S. 91, 93 (1972).

The Court has established "prudential and equitable limitations upon the exercise of [its] original jurisdiction." *California v. Texas*, 457 U.S. 164, 168 (1982). In determining whether and how to exercise its original jurisdiction, the Court considers, in particular, the seriousness and dignity of the claim.[14] *Arizona v. New Mexico*, 425 U.S. at 796; *see also Mississippi v. Louisiana*, 506 U.S. 73, 76 (1992). The Court will deny a motion where the claim presented is without merit. *See Alabama v. Texas*, 347 U.S. 272 (1954).

> The requirement of a motion for leave to file a complaint, and the requirement of a brief in opposition, permit and enable us to dispose of

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[14] An additional consideration is the existence of another forum on the underlying issue. This Court looks with suspicion at suits where the State is a "nominal party" actually suing on behalf of individual citizens. *Arizona v. New Mexico*, 425 U.S. 794 (1976); *see also* Robert L. Stern, *et al.*, *Supreme Court Practice* (7th ed. 1993), at 464-465. Here, there is an appropriate forum to attack the validity of Maine's income tax. *See Goumas v. State Tax Assessor*, 2000 ME 79, ___Me.___ (May 9, 2000) (class member barred from relitigating boundary issue); *Abbott, et al. v. State Tax Assessor*, Nos. 92-553, 93-556, and 93-577 (Me. Superior Ct., June 12, 1998) (class action claiming Shipyard was not in Maine, dismissed with prejudice); *see also Stevens v. State Tax Assessor*, 571 A.2d 1195 (Me.), *cert. denied*, 498 U.S. 819 (1990) (New Hampshire residents, represented by the New Hampshire Attorney General, filed suit in Maine state courts, challenging the constitutionality of Maine's tax statute).

> matters at a preliminary stage. Our object in original cases is to have the parties, as promptly as possible, reach and argue the merits of the controversy presented. To this end, where feasible, we dispose of issues that would only serve to delay adjudication on the merits and needlessly add to the expense that the litigants must bear.

Ohio v. Kentucky, 410 U.S. 641, 644 (1973) (citations omitted); *see also California v. United States*, 457 U.S. 273, 278 (1982) (decided on motion for judgment on pleadings without appointment of a Special Master); *United States v. Louisiana*, 339 U.S. 699 (1950) (decided on motion for judgment). This Court can and should dispose of this matter at this stage.

II. NEW HAMPSHIRE'S MOTION SHOULD BE DENIED BECAUSE ITS BASIC PREMISE IS INCORRECT.

New Hampshire's motion fails for numerous reasons, not the least being that it is based upon a false premise. New Hampshire avers that the matter cannot be summarily adjudicated because "Maine's claim [is] that a boundary in the middle of the main channel on the New Hampshire side of the shipyard islands has been established by prescription". Motion, at 1 & 6; Proposed Complaint, at ¶ 13. Maine has never, and does not now, claim the boundary was fixed in the middle of the river only by prescription.

The cornerstone of New Hampshire's premise is a reference to the testimony of Maine Attorney General Ketterer at the Senate Hearings on the effort of the New Hampshire congressional delegation to exempt from Maine taxation New Hampshire residents who work at

the Shipyard. Motion, at 1 n.2. Taking his comments out of context, New Hampshire implies that Attorney General Ketterer claimed the middle of the river boundary was based only on acquiescence. *Id.* He did no such thing. Rather, at the hearing, Mr. Ketterer explained that the 1740 decree defined the boundary as the middle of the river, as fully confirmed by this Court's decision in 1976, *and* by Maine and New Hampshire continuously and consistently agreeing on and acquiescing in that boundary.[15] As the fundamental premise of New Hampshire's motion to litigate this matter is palpably wrong, it fails.

III. NEW HAMPSHIRE'S CLAIM TO A BOUNDARY LINE ALONG MAINE'S SHORE IS WITHOUT MERIT AS A MATTER OF LAW.

In any event, New Hampshire's claim to a boundary along Maine's mainland lacks dignity and seriousness because it was rejected 260 years ago by the Crown, a result formally confirmed by New Hampshire's Legislature, Governor and Attorney General, and affirmed by this Court.

In *Ohio v. Kentucky*, 410 U.S. at 650, the Court summarily disposed of Ohio's motion to add a new boundary claim against Kentucky because the existing pleadings allowed the resolution of the claim as a matter of law at the preliminary stage. The Court looked to Ohio's prior pleadings as well as prior decisions of the Supreme Court and lower courts, and pronouncements of Ohio's Legislature. The Court flatly rejected Ohio's contention that the

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[15] *Concerning State Taxation of Individuals Working At Certain Federal Facilities Straddling State Borders: Hearing on H.R. 1953 Before the Senate Comm. On Governmental Affairs*, 105 Cong. 30-33 (1997) (Maine Lodging, at Tab 14).

historical premise of the prior cases was invalid – it was too late in the day to readdress such issues. *Id.*

The present motion provides an even more compelling case for rejection at this stage of the proceedings. New Hampshire claims that the boundary is along Maine's mainland. New Hampshire took this very position in 1737 and 1738, when it appealed the Royal Commissioners' finding that the boundary is the "middle" of the Piscataqua River. In 1740, King George II rejected New Hampshire's appeal. In 1828, the New Hampshire Legislature and Governor adopted the report of their Boundary Commissioners confirming that the boundary line is the "middle" of the Piscataqua River. It was Maine, not New Hampshire, that ceded jurisdiction over the Shipyard islands in 1822 and 1863 to the United States Government.

Official New Hampshire maps have consistently placed the Shipyard in Maine. (*See* Maine Lodging, at Tabs 21-25). In 1969, New Hampshire Attorney General Pappagianis formally opined that the Shipyard islands were in Maine. In the 1970's, New Hampshire Attorney General Rudman repeatedly confirmed in pleadings before this Court that the boundary line was the "middle" of the Piscataqua River. This Court found and decreed that boundary line was fixed in 1740. *New Hampshire v. Maine*, 434 U.S. 1 (1977). In the 1980's, New Hampshire Attorney General Merrill in a report to the Legislature stated that the Shipyard was in Maine. It is compelling that the Attorneys General of New Hampshire have repeatedly and consistently confirmed that the middle of the river is the boundary and that the Shipyard is in Maine. *See Illinois v. Kentucky*, 500 U.S. 380, 386-87 (1991). The reasoning of *Ohio v. Kentucky* mandates rejection of New Hampshire's claim at this early stage.

This result is fully supported by the policies underlying *res judicata*. The Court "does not reopen an adjudication in an original action to reconsider whether initial factual determinations were correctly made." *Arizona v. California*, 460 U.S. 605, 623-24 (1983); *see also Louisiana v. Mississippi*, 516 U.S. 22, 24 (1995) (controlling principles of application of thalweg established in prior litigation). "A final judgment on the merits of an action precludes the parties . . . from relitigating issues that were or could have been raised in that action." *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981); *see also Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 476 (1998).

The preclusive effects of a prior adjudication are collectively referred to by commentators as the doctrine of *res judicata*. *Migra v. Warren City School District Bd. of Educ.*, 465 U.S. 75, 77 n.1 (1984). The bar may be analyzed further to consist of three concepts: issue preclusion (or collateral estoppel) which binds the parties on issues of law or fact litigated and resolved in a prior adjudication (*id.*; *Baker v. General Motors Corp.*, 522 U.S. 222, 233 n.5 (1998)); claim preclusion which forecloses "litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit" (*Migra*, 465 U.S. at 77 n.1); and judicial estoppel which precludes a party from asserting a position in one legal proceeding which is contrary to a position asserted in an earlier proceeding (*see, e.g., Data General Corp. v. Johnson*, 78 F.3d 1556, 1565 (Fed. Cir. 1996)). The present motion is barred by any and all of these principles.

Under issue preclusion, when matters are litigated to a final judgment and the determination of an issue is essential to that judgment, "the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Restatement (Second)

of Judgments, § 27; *see also Arizona v. California*, 460 U.S. 605, 619 (1983); *Montana v. United States*, 440 U.S. 147, 153 (1979). New Hampshire has litigated this issue twice. First, New Hampshire specifically litigated the issue of the location of this boundary in the 1730's, resulting in the Crown's establishing the "middle of the river" boundary in 1740, thus binding the colonies. *See Rhode Island v. Massachusetts*, 45 U.S. 591, 634 (1846). Second, in the 1970's New Hampshire specifically raised, litigated and had resolved the boundary in the river. The location of the boundary between Maine and New Hampshire in the Piscataqua River was essential to the determination of the location of the lateral marine boundary because one end point of the marine boundary was, according to New Hampshire, at the "mouth of the Portsmouth Harbor (which is also the mouth of the Piscataqua River)." Plaintiff's Reply Brief at 2, Original No. 64. New Hampshire specifically litigated the issue of the boundary in the river, arguing that the geographic middle rather than the thalweg was the proper border. *See* Exceptions and Brief of the Plaintiff, Original No. 64. As a matter of law, New Hampshire is collaterally estopped from reopening that issue.

New Hampshire asserts that the 1976 decision has no relevance because it dealt with the area "outside" the harbor. Motion, at 25 n.59. As New Hampshire itself argued in the 1970's, the location of the boundary at the mouth of the river was critical to drawing the line to the Isles of Shoals. *See* Exceptions and Brief of the Plaintiff, *supra*. If the line began at the shore of Maine's mainland, a much larger area would have been included in New Hampshire's jurisdiction. The location of the river boundary was of great moment and significance in the earlier litigation between the two states before this Court.

Claim preclusion bars a litigant from raising in subsequent litigation issues on matters that should have been raised in prior litigation. *Migra v. Warren City School District*, 465 U.S. at 77 n.1; 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure*, §§ 4406, 4407, 4414 (1981); *see also Allen v. McCurry*, 449 U.S. 90, 95 n.6 (1980). In the 1970's, New Hampshire presented to this Court a claim regarding the location of the boundary in the Piscataqua River. New Hampshire could have put forward the new claims it now proffers that the boundary was on the Maine shore which, if successful, would have greatly benefited New Hampshire. New Hampshire's failure to raise these claims, therefore, precludes it, as a matter of law, from doing so now.

New Hampshire suggests that the approval of the Consent Decree in *New Hampshire v. Maine* has no preclusive effect because the Court entered the Consent Decree "without making any findings of its own on the underlying facts or legal principles." Motion, at 5 n.7, & 25 n.59. In doing so, New Hampshire ignores its repeated insistence that the "middle of the river" was the boundary, and that it most strongly argued that the Consent Decree could not be approved because it was founded on faulty facts and law. *See* New Hampshire's Exceptions and Brief of the Plaintiff, and Reply Brief, Original No. 64; *New Hampshire v. Maine*, 426 U.S. at 369. The Court could not have approved the Consent Decree without fulfilling its constitutional duty to adjudicate the law and facts; simply rubber stamping a settlement would violate the Compact Clause. *New Hampshire v. Maine*, 426 U.S. at 367-69. The Court was unequivocal in deciding the underlying legal principles of the litigation:

> [T]he 1740 decree, not the proposed consent decree, permanently fixed the boundary between the States; the proposed consent decree does nothing except record the States' agreement upon the location of the 'Mouth of Piscataqua River,' 'Middle of the River,' and 'Middle of the Harbour' within the contemplation of the 1740 decree.

Id. at 367-368, 370. New Hampshire's year 2000 protestations notwithstanding, the legal principle defining the "middle of the river" as the boundary was litigated and determined to a resolution in 1976.

The doctrine of judicial estoppel is commonly thought to have originated from this Court's decision in *Davis v. Wakelee*, 156 U.S. 680 (1895);[16] *see also Ohio v. Kentucky*, 410 U.S. 641 (1973) (relying upon Ohio's prior pleadings to reject new theories). The doctrine generally precludes a party from asserting a position in one legal proceeding which is contrary to a position it previously asserted in another. *See, e.g., Patriot Cinemas, Inc. v. General Cinema Corp.*, 834 F.2d 208, 212 (1st Cir. 1987).[17]

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[16] *See, e.g., Data General Corp. v. Johnson*, 78 F.3d 1556, 1565 (Fed. Cir. 1996); *U.S. Philips Corp. v. Sears Roebuck & Co.*, 55 F.3d 592, 596 (Fed. Cir. 1995); *In re: Osborn*, 24 F.3d 1199, 1207 (10th Cir. 1994); *Chaveriat v. Williams Pipe Line Co.*, 11 F.3d 1420, 1427 (7th Cir. 1993); *Fleck v. KDI Sylvan Pools, Inc.*, 981 F.2d 107, 121 (3rd Cir. 1992).

[17] The doctrine has been recognized by the Courts of Appeals for the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Eleventh, and Federal Circuits. *Afram Carriers, Inc. v. Moeykens*, 145 F.3d 298, 303 (5th Cir. 1998); *Hossaini v. Western Missouri Medical Center*, 140 F.3d 1140, 1143 (8th Cir. 1998); *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 359 (3rd Cir. 1996); *Data General Corp. v. Johnson*, 78 F.3d 1556, 1565 (Fed. Cir. 1996); *DeGuiseppe v. Village of*

The majority of jurisdictions hold that judicial estoppel applies only if the position asserted by the party in the previous proceeding was accepted by the court. *See, e.g., Mitchell v. Washingtonville Cent. School Dist.*, 190 F.3d 1, 6 (2d Cir. 1999); *Lydon v. Boston Sand & Gravel Co.*, 175 F.3d 6, 12-13 (1st Cir. 1999); *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 599 (6th Cir. 1982). Under the minority view, it does not matter whether the court accepted the earlier position. *Morris v. California*, 966 F.2d 448, 453 (9th Cir. 1991), *cert. denied*, 506 U.S. 831 (1992).

Under either view, judicial estoppel applies here. As detailed above, in the 1976 case, New Hampshire repeatedly asserted that the 1740 Decree established the boundary between Maine and New Hampshire in the Piscataqua River. This Court adopted New Hampshire's assertion that the 1740 Decree "permanently fixed the Maine-New Hampshire boundary." *New Hampshire v. Maine*, 426 U.S. at 367. New Hampshire is estopped from contradicting its earlier pleadings.

Bellwood, 68 F.3d 187, 191 (7th Cir. 1995); *Bates v. Long Island R. Co.*, 997 F.2d 1028, 1038 (2d Cir. 1993), *cert. denied*, 510 U.S. 992 (1993); *Morris v. California*, 966 F.2d 448, 452-53 (9th Cir. 1991), *cert. denied*, 506 U.S. 831 (1992); *McKinnon v. Blue Cross and Blue Shield of Alabama*, 935 F.2d 1187, 1192 (11th Cir. 1991); *Patriot Cinemas, Inc. v. General Cinema Corp.*, 834 F.2d 208, 212 (1st Cir. 1987); *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 599 (6th Cir. 1982); *Allen v. Zurich Ins. Co.*, 667 F.2d 1162, 1166-67 (4th Cir. 1982). Only the Courts of Appeals for the District of Columbia and the Tenth Circuit have failed to recognize judicial estoppel. *United States v. 49.01 Acres of Land*, 802 F.2d 387, 390 (10th Cir. 1986); *Konstantinidis v. Chen*, 626 F.2d 933, 938 (D.C. Cir. 1980).

IV. NEW HAMPSHIRE CANNOT CARRY ITS BURDEN AS A MATTER OF LAW.

New Hampshire has the burden of proving it has wrested dominion of the islands from Maine, a burden New Hampshire cannot meet as a matter of law.

At the outset, certain concepts proffered by New Hampshire must be corrected. New Hampshire suggests that it is Maine that has the burden to come forward to show prescriptive rights to islands on Maine's side of the river. Motion, at 1. This Court has repeatedly held that thalweg is the applicable rule regarding river boundaries between states, unless changed by statute or usage over so great a length of time as to require a contrary result. *Louisiana v. Mississippi*, 516 U.S. 22, 25 (1995); *New Jersey v. Delaware*, 291 U.S. 361, 379 (1934); *Iowa v. Illinois*, 147 U.S. 1, 10 (1893). Thalweg will be applied to water boundaries between all states "in the absence of usage or convention pointing to another." *New Jersey v. Delaware*, 291 U.S. at 380; *Arkansas v. Tennessee*, 246 U.S. 158, 170-71 (1918).[18]

There is no geographic dispute that the Shipyard islands are on Maine's side of the "middle" of the Piscataqua River. Thus, the onus is upon New Hampshire, and not Maine, to come forward with evidence to rebut the presumption of the thalweg. New Hampshire must show by a preponderance of evidence "a long and continuous possession of, and assertion of sovereignty over" the Shipyard islands, "as well as [Maine's] acquiescence in those acts of possession and jurisdiction." *New Jersey v.*

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[18] The thalweg doctrine has been applied to the Treaty of 1763, which has its roots in the Treaty of 1716. *Id.*; *Louisiana v. Mississippi*, 202 U.S. 1, 41-42 (1906); *Iowa v. Illinois*, 147 U.S. at 8. Indeed, the concept of the thalweg has been traced to a period earlier than the Treaty of Munster in 1648. *New Jersey v. Delaware*, 291 U.S. at 382 n.6.

New York, 523 U.S. 767, 786-87 (1998). In view of the undisputed history in this matter, New Hampshire cannot, as a matter of law, carry its burden.

First, New Hampshire asserted in the 1730's that the boundary was the Maine coastline, and not the "middle of the river." New Hampshire lost that argument in 1740.

Second, in 1828, the New Hampshire Legislature and Governor accepted the report of their own Boundary Commissioners, which stated that the boundary was the middle of the river. *See Indiana v. Kentucky*, 136 U.S. 479, 512-13, 515 (1890) ("It is an admission entitled to great weight"); *see also, Georgia v. South Carolina*, 257 U.S. 516, 518-520 (1922); *Vermont v. New Hampshire*, 289 U.S. 593, 616 (1933); *Rhode Island v. Massachusetts*, 45 U.S. 591, 635, 638-39 (1846).

Third, the deeds to the United States in 1800 and 1866 all describe the Shipyard islands as being in Maine, and are recorded in Maine.

Fourth, Maine ceded jurisdiction of these islands to the United States in 1822 and 1863. As noted by New Hampshire Attorney General Pappagianis, New Hampshire did not raise an objection to this cession of jurisdiction by Maine.

Fifth, before becoming a federal enclave, the islands in the Shipyard were taxed in Maine, and have been within Maine's voting and census districts. Kittery built a school on Seavey Island.

Sixth, on their official maps, New Hampshire and Maine have consistently placed the Shipyard in Maine. *See* Maine Lodging, at Tabs 20-29.

Seventh, in 1969 New Hampshire's highest legal officer opined unequivocally that the Shipyard was in Maine, an opinion confirmed by one of his successors in 1986. *See Illinois v. Kentucky*, 500 U.S. at 386-87.

Eighth, New Hampshire repeatedly pled and argued before this Court in the 1970's that the boundary was the middle of the river, a conclusion confirmed in this Court's decision and decree.

Ninth, the only way to walk or drive to the Shipyard has been through Maine. *See United States v. Louisiana*, 394 U.S. 11, 66 (1969) (Louisiana Boundary Case) (islands are considered part of the mainland if they "are so integrally related to the mainland that they are realistically parts of the 'coast' "); *see also United States v. Maine*, 469 U.S. 504, 516 (1985).

Tenth, New Hampshire concedes that Badger, Fishing and Whaleback Islands, all on Maine's side of the thalweg, are in Maine.

Finally, Maine's exercise of sovereignty over the Shipyard islands is nothing new. New Hampshire has known of it since at least the 1740 King's Decree. The notoriety of the "middle of the river" boundary is extensively documented over the last 260 years in the States' legislation, reports, opinions, pleadings and official maps. New Hampshire's delay in bringing suit for many years challenging that boundary removes any doubt of Maine's rights. *See Michigan v. Wisconsin*, 270 U.S. 295, 318 (1926); *Indiana v. Kentucky*, 136 U.S. at 510; *Virginia v. Tennessee*, 148 U.S. 503, 523 (1893); *Rhode Island v. Massachusetts*, 45 U.S. at 639.

In view of this undisputed history, New Hampshire cannot carry its burden, as a matter of law, that Maine acquiesced in New Hampshire's purported dominion over the Shipyard islands on Maine's side of the thalweg.

After millions of dollars in expense,[19] the result will be as New Hampshire itself has formally pled:

> The "middle of the river," . . . constituted the boundary between the states from and after the 1740 decree, and . . . constitutes the boundary to this day . . . [T]he present river boundary is the one established by the 1740 decree . . .

Exceptions and Brief of the Plaintiff New Hampshire, at 5, Original No. 64.

CONCLUSION

For the reasons discussed above, the Motion for Leave to File should be denied. The Court should summarily dispose of this matter based on the pleadings presented to it.

Respectfully submitted,

State of Maine

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**Counsel of Record*

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Of Counsel

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[19] The expense is not of mere academic concern to Maine. The cost of the Special Master alone in the recent *New Jersey v. New York* litigation was $772,000.

No. 130, Original

In The

Supreme Court of the United States

STATE OF NEW HAMPSHIRE,

Plaintiff,

v.

STATE OF MAINE,

Defendant.

APPENDICES

ROYAL COMMISSIONERS REPORT (1737)
19 N.H. Provincial Papers 391-92
(Albert Stillman Batchellor ed., 1891)

Hampton Septr the 2 1737 at a Court of Commissrs Appointed by His Majesty's Commission under the Great Seal of Great Britain to Settle Adjust & Determine the Respective Boundaries of the Provinces of the Massa Bay & New Hampr in New England then & there held.

* * *

And as to the Northern Boundary between the Said Provinces the Court Resolve & Determine that the Dividing Line Shall pass up thro' the mouth of Piscataqua Harbour & up the Middle of the River into ye River of Newichwannock (part of which is now called Salmon Falls) & thro' the Middle of the Same to the furthest head thereof & from thence North two Degrees Westerly until one hundred & twenty Miles be finished from ye Mouth of Piscataqua Harbour Aforesd or until it meets with His majestys other Governmts and that the Dividing line shall part the Isles of Shoals & run thro' the Middle of the Harbour between the islands to the sea on the Southerly side & that the Southwesterly part of the Said Islands Shall lye in & be Accounted part of the Prov. Of New Hampr & that ye North Easterly part thereof shall lie in & be Accounted part of the Prov. Of the Massa Bay & be held & Enjoyed by the Said Provs Respectively in the Same manner as they Now do & have heretofore held and Enjoyd the Same – And the Court do further Adjudge that ye Cost & Charge arising by taking out the Commission as also of the Commissrs & their officers Viz the two

Clerks Surveyer & Waiter for their Travelg Expˢ & attendance in the Execution of the Same be Equally born by the Said Provˢ

Ph Livingston
Will: Skene
Eras: Jaˢ Philipps
Otho Hamilton
John Gardner
John Potter
George Cornell

NEW HAMPSHIRE EXCEPTIONS (1737)
2 Laws of New Hampshire (1913), at App. 771-72

To the Honourable the Commiss^{rs} appointed by his Maj^{ties} Com'iss^{n} under the Great Seale to Settle the Boundarie Lines between his Maj^{ties} Province of New Hampshire, and the Province of Massachusets Bay in New England.

* * *

3^{d}ly and as to the Northern Boundary: We object against that part of the Judgm^{t} that Says: "Through the Mouth of Piscataqua Harbour and up the Midle of the River" Because we humbly conceive that m^{r} Gorges Patent, By which the Mass^{a} Claime doth not convey any Right to the River. For the whole of that River and the Jurisdiction thereof hath Ever been in the Possession of this Province and never Claimed by the Massachusets: and this Province in order to preserve & Safeg'ard the same have always had a Castle and maintaind a Garrison there.

And the Com'ittee Appointed by the Generall Assembly of this Province to Lay all papers and Evidences Relateing to the Affaire of the Lines before the Com'iss^{rs} are hereby Directed to present this Vote Immediately to the Court of Commiss^{rs} for setling the Lines And pray that the same may be Entred at Large in their Minits and made part of their Records.

October the 14th 1737 – By Order of the House or Representatives

James Jeffrey Cle^{r}-Ass^{m}

NEW HAMPSHIRE APPEAL (1738)
19 N.H. Provincial Papers 565, 596-97
(Albert Stillman Batchellor ed., 1891)

The House of Representatives of his Majesty's Province of *New Hampshire*, by *John Thomlinson* Esq.; their Agent, for and on behalf of *His Majesty*, and of said *Province*, –	)))))	Appellants.
The Province of the Massachusets Bay. . .	)	Respondents.

AND

The Governor, only, of the Province of the *MassaChusets Bay*.....	Appellant.
The House of Representatives of the Province of *New Hampshire*.....	Respondents.

THE CASE of the House of Representatives of the Province of *New Hampshire*, depending before the Right Honourable the Lords of the Committee of His Majesty's most Honourable Privy-Council, upon two Petitions of *Appeal* presented to His Majesty in Council on the 6th of February 1737, and 20th of July 1738, from the Determination made on the 2d of September 1737, by His Majesty's Commissioners for settling the *Boundaries* of those *Provinces*.

* * *

As to the *northern* Boundary, the Commissioners Judgment directs the dividing Line to pass up *the middle*

of Piscataqua River and *through the middle of* Newichwannock River; but it's hoped that that is wrong: For, if recourse be had to the Grant from the Crown of the Province of *Maine*, made to Sir *Ferdinando Gorges*, it will appear that no part of the *Rivers* were granted to him, but only *Main Land*, between the Rivers of *Piscataqua* and *Sagadahocke;* consequently if he did make any Conveyance to the *Massachusets*, (which has been pretended, though not proved) he could not convey to the old Colony of the *Massachusets* any part of either of those *Rivers* which he himself had no title to. – And upon looking into the New Charter to the Province of the *Massachusets*, where the Lands which made the Province of *Maine* are granted to them, it will appear that the *same* Land is again granted in the *same Terms*, as a Portion of *main Land* between the said Rivers. – The *Massachusets* never possess'd, or claimed, the *Rivēr* itself, or any part of it, neither under their old or new Charter; nor, in their Demand filed before the Commissioners, did they demand half of any part of the *Rivers*: So that it's humbly hoped this part of the Commissioners Judgment, which in consequence adjudges *half of the Rivers* to the *Massachusets* without any Demand by, or any Title in, the *Massachusets* will be revers'd.

MASSACHUSETTS' RESPONSE (1738)
19 N.H. Provincial Papers 601, 627-28
(Albert Stillman Batchellor ed., 1891)

Massachusets Bay and New Hampshire.

The CASE of His Majesty's Province of the Massachusetts Bay, *touching the Dispute between that Province and His Majesty's Province of* New Hampshire, *in relation to their Boundaries on the Settlement thereof made by Commissioners appointed for that Purpose, and on Cross Appeals therefrom.*

* * *

New Hampshire insist, That the Commissioners have done wrong in directing the Northern Line to run thro' the Mouth of *Piscataqua*, and so up the Middle of the River; insisting *Gorges's* Patent doth not pass any Right to the River, and that the Whole of that River, and the Jurisdiction thereof, hath ever been in the Possession of *New Hampshire*, and never claimed by the *Massachusetts*.

By the express Words of *Gorges's* Grant the line must run thro' the Mouth of *Piscataqua*, and up the Middle of the River, it being impossible to run the Line agreeable to the Description of that Grant, without.

And (notwithstanding what *New Hampshire* have surprisingly insisted on the contrary) Possession and Enjoyment have been agreeable hereto, it being a known Truth, that from Time immemorial the Province of *Maine* have and now do possess and receive Taxes constantly from all the Islands lying in that River, on that Side towards the Province of *Maine*; and the *Massachusetts* aver in the most solemn manner, That *New Hampshire* have never in any

one Instance exercised the Jurisdiction of the whole River, and that the Province of *Maine* have constantly possessed and enjoyed the Islands all along their Side of the River – the Fact being, That all the Islands in the said River have been always considered and taxed as belonging to that Government they lay nearest to.

For all which amongst many other Reasons, the Province of the Massachusetts Bay humbly hope, their Lordships will be of Opinion to vary the Determination of the Commissioners in the Particulars they have appealed from; but that their Determination shall Stand and be Affirmed in all other respects; and that the New Hampshire *Appeal therefrom shall be dismissed.*

J. Strange.
R. Hollings.

ORDER OF PRIVY COUNCIL (1739)
19 N.H. Provincial Papers 600
(Albert Stillman Batchellor ed., 1891)

THE CASE

Of his Majesty's Province of

NEW HAMPSHIRE.

Upon two APPEALS

Relating to the Boundaries between that Province and the Province of the *Massachusetts Bay.*

To be heard before the Right Honourable the Lords of the Committee of his Majesty's Most Honourable Privy-Council for hearing APPEALS from the *Plantations*, at the Council-Chamber at *Whitehall.*

Wednesday 5th March 1739. at 6, in the Evening & again on 10th March –

Ordd and adjudged –

That the Northern Boundarys of the Province of the Massachusets Bay are and be a Similar Curve Line pursuing the Course of Merrimack River at three Miles Distance on the North side thereof beginning at the Atlantick Ocean and ending at a Point due North of a Place in the Plan returned by the Commissrs called Pantucket Falls and a Strait Line drawn from thence due West cross the said River till it meets with His Majestys other Governmts And it is further Ordered that the rest of the Commissrs Report or Determination be Affirmed –

[The date of hearing and judgment above given, appear in manuscript on the original.]

WENTWORTH COMMISSION (1741)
2 Laws of New Hampshire (1913), at App. 600.

Commission of Governor Benning Wentworth

George the Second by the Grace of God of Great Britain, France and Ireland King Defender of the Faith & c. To Our Trusty and Wellbeloved Benning Wentworth Esq^{r} Greeting Whereas We did by our Letters Patents under Our Great Seal of Great Britain bearing date at Westminster the . . . Day of . . . in the . . . Year of Our Reign constitute and appoint Jonathan Belcher Esq^{r} Governor and Commander in Chief of Our Province of New Hampshire within Our Dominion of New England in America, lying and extending itself from three miles Northward of Merrimack River, or any part thereof unto the Province of Main, with the South part of the Isles of Shoals during Our will and Pleasure as by the said recited Letters Patents, relation being thereunto had may more fully and at large appear. Now know You that We have revoked and determined and by these Presents do revoke and determine the said recited Letters Patents, and every Clause Article and thing therein contained. And further know You, that We reposing especial Trust and Confidence in the Prudence, Courage and Loyalty of you the said Benning Wentworth, out of Our especial Grace, certain knowledge and meer Motion have thought fit to constitute and appoint, and by these Presents do constitute and appoint you, the said Benning Wentworth to be Our Governor and Commander in Chief of Our Province of New Hampshire within Our Dominion of New England in America, bounded on the south Side by a similar curve Line pursuing the Course of Merrimack River at

three Miles Distance on the North Side thereof, beginning at the Atlantic Ocean and ending at a Point due North of a Place called Pantucket-Falls, and by a strait Line drawn from thence due West cross the said River till it meets with our other Governments. And bounded on the North Side by a Line passing up thro the Mouth of Piscataqua Harbour, and up the middle of the River into the River of Newichwannock (part of which is now called Salmon Falls) and thro the middle of the same to the furthest head thereof, and from thence North, two Degrees Westerly until one hundred and twenty Miles be finished from the Mouth of Piscataqua Harbor aforesaid, or until it meets with Our other Governments; And by a dividing Line parting the isles of Shoals, and running through the Middle of the Harbour between the said Islands to the Sea, on the Southerly side, the Southwesterly part of the said Islands to be accounted part of our Province of New Hampshire during Our Will and Pleasure.

* * *

In Witness &c &c &c –

WENTWORTH INSTRUCTIONS (1741)

2 Laws of New Hampshire (1913), at App. 608, 634-36.

Instructions to Governor Benning Wentworth

Instructions to Benning Wentworth Esq[r] His Majesty's Governor and Commander in Chief in and over the Province of New Hampshire in New England in America.

* * *

Boundaries settled

85. Whereas Disputes & Controversies have, for many Years subsisted between his Majesty's loving Subjects of the Province of the Massachusets Bay and New Hampshire in New England, in regard to the Boundaries between the said Provinces:

* * *

And as to the Northern Boundary between the said Provinces, the Court resolve & determine that the dividing Line shall pass up thro the Mouth of Piscataqua Harbour and up the middle of the River into the River of Newichwannock (part of which is now called Salmon Falls) and thro the middle of the same to the furthest Head thereof.

* * *

It is therefore His Majesty's Will and Pleasure, and you are hereby required & enjoined under Pain of His Majesty's highest Displeasure and of being removed from your Government, to take especial Care that His majesty's Commands in this Behalf be executed in the most effectual & expeditious Manner, to the End that His Majesty's good Intentions for promoting the Peace & Quiet of

the said Provinces, nay not be frustrated or delayed: And You are likewise hereby directed to communicate this Instruction to the Council and Assembly of his Majesty's said Province of New Hampshire, & to cause the same to be entred in the Council Books thereof.

* * *

Maine Private and Special Laws, 1825, c. 337

An act for the preservation of fish in Piscataqua River.

Sect. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That, from and after the passing of this act, if any person or persons shall fish in the Piscataqua river, or any of the branches thereof, within this State, below the Portsmouth Bridge, with a seine or net more than twelve rods in length; or if any person or persons shall fish above said bridge, between said bridge and the Thompson's Pond Brook, so called, in the town of Elliot, with any seine whatever, for each and every such offence, he or they shall forfeit the sum of ten dollars, to be recovered in an action of debt, in any court of competent jurisdiction to try the same, one half to the person prosecuting therefor, and one half to the poor of the town, in which the offence shall have been committed.

Sect. 2. *Be it further enacted,* That if any person or persons, shall fish with any trap or set line, so called, in said river, or any of the branches thereof, within this State, he shall forfeit the sum of six dollars, and all the said lines and hooks of every description; to be recovered by complaint, before any Justice of the Peace, for the county of York, one half to the complainant, and one half to the poor of the town in which such offence shall have been committed.

Sect. 3. *Be it further enacted,* That it shall be the duty of the selectmen of the towns of Kittery and Elliott, to appoint annually, two or more fish wardens in each of said towns, who shall each receive a certificate of their appointment, and who shall be severally sworn to the

faithful discharge of their duty; and it shall be the duty of such wardens to see that the provisions of this act are carried into effect.

Sect. 4. *Be it further enacted,* That the term, during which the wardens first appointed under this act, shall hold their respective offices, shall be from the time of their appointment to the first Monday of May next; and all laws heretofore made respecting the fisheries in said river, are hereby repealed: *Provided however,* That this provision shall not be construed, so as to extend to "An Act for the preservation of alewives and other fish in Salmon Falls River," passed February ninth, in the year one thousand eight hundred and twenty four.

[*This Act passed February 23, 1825*]

Maine Private and Special Laws, 1921, c. 33

An Act Relating to the Catching of Smelts in the Piscataqua River.

Be it enacted by the People of the State of Maine, as follows:

Smelts not to be taken in Piscataqua River with seines and nets; weirs permitted for taking smelts for home consumption. No person shall use seines or nets of any description to catch smelts in the Piscataqua River or its tributaries; provided, however, that nothing in this act shall forbid any one from maintaining a weir to catch smelts for his own personal use.

Approved March 10, 1921.

Maine Private and Special Laws, 1874, c. 573

An act to prevent the destruction of smelts in the Piscataqua river and its tributaries.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

SECT. 1. All persons are hereby prohibited from taking any smelts from the Piscataqua river or its tributaries, in the county of York, by means of weirs, drag nets, traps or other contrivance than hook and line.

SECT. 2. Whoever shall violate the provisions of this act, shall, on conviction of the same before any trial justice of said county of York, be punished by a fine of not less than ten dollars nor more than twenty dollars, or imprisonment in the county jail for a term not exceeding ten days.

SECT. 3. All fines under the second section of this act shall be divided as follows: one half to the complainant, and one half to the use of the state.

Approved February 28, 1874.

Maine Private and Special Laws, 1866, c. 136

An act to prevent the catching of trout and pickerel in the Piscataqua river and its tributaries.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

If any person in the months of March, April or May shall catch or kill any pickerel in so much of the Piscataqua river, or its tributaries, as are within the limits of this state, or in the months of October or November shall, in any of said waters, catch or kill any trout, he shall be punished by a fine of ten dollars for each fish so caught or killed, to be recovered in an action of debt in the name and to the use of the county, or in the name of any person suing therefor, one half of said fines to be paid to the person prosecuting, the other half to the county where the offence is committed.

Approved February 20, 1866.

Maine Private and Special Laws, 1861, c. 72

An act relating to pilots in Piscataqua river and harbor.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

SECT.1. If any pilot shall speak and offer service to any vessel except coasting and fishing vessels of the United States of one hundred and fifty registered or enrolled tons and under, bound into the river and harbor of the Piscataqua, south of a line drawn east and west from Whales' Back Light House, or shall offer service to any vessel bound out of the river or harbor of the Piscataqua, except coasting and fishing vessels of the United States of like tonnage as above named, he shall be entitled to one half of the fees specified in his warrant or commission in case the master or owner declines to employ him, unless said master or owner has on board of his vessel at the time of such offer a branch pilot duly appointed and commissioned by the governor and council of this state; and on refusal of payment may sue for and recover the same; and all vessels requiring pilots into and out of the harbor of the Piscataqua shall take branch pilots, if such offer their services to inward bound vessels south of said line, and to outward bound vessels before they leave the wharf or mooring.

SECT. 2. All acts and parts of acts inconsistent herewith are hereby repealed.

SECT. 3. This act takes effect when approved by the governor.

[Approved March 13, 1861]

Massachusetts Resolves, 1794, c. 101

Resolve requiring the inhabitants of the several towns and districts in the Commonwealth, to cause to be taken by their selectmen, or some other suitable persons, accurate plans of their respective towns, and to lodge the same in the secretary's office.

Whereas an accurate Map of this Commonwealth will tend to facilitate & promote such information and improvements as will be favourable to its growth and prosperity, and will otherwise be highly useful and important on many public and private occasions: – For the procurement of the materials necessary for the accomplishment of an object so desirable, & by which the reputation & interest of the Commonwealth will be advanced: –

Resolved, that the Inhabitants of the several Towns and Districts in the Commonwealth be and they hereby are required to take or cause to be taken by their Selectmen or some other suitable person or persons appointed for that purpose accurate plans of their respective Towns or Districts, upon a scale of two hundred rods to an Inch, and upon a survey hereafter actually to be made or that has actually been made within seven years next preceeding this time – and the same plans to lodge in the Secretary's Office, free of expence to the Commonwealth, on or before the first day of June in the year 1795.

And be it further resolved, that on each of said plans the place where any other Town of District line meets or joins the line or any Town or District respectively, the names and course of Rivers, the Bridges over rivers, the

course of County Roads, the situation of Houses for Public Worship, Court Houses, the reputed or actually known and admeasured distance of the centre of the Town or District from the shire-town of the County, and from the Metropolis of the Commonwealth, in the several roads usually traveled the length, and the course by the magnetic needle of the boundary lines of the Town or District, the scale on which such plans shall be taken, & the time when the actual survey was or shall have been made, shall be inserted, specified, delineated or described: And any lands belonging to the Commonwealth within the limits of any Town or District or adjoining thereto in any place unincorperated shall be particularly noted; and the reputed or known quantity of such land specified.

And to prevent as much as may be any errors which might arise by having the lines between Towns run at different Times by Surveyors of different adjoining Towns –

Be it further resolved that it shall be the duty of the person or persons appointed for the purposes aforesaid by the most ancient Town or District adjoining to any other Town of District to give notice in writing unto the Selectmen of such adjoining Town of District of the time and place of meeting for running such line or lines ten days beforehand; and it shall be the duty of the Town or District whose Selectmen shall be so notified to appoint and require some suitable person or persons to attend on the behalf of such Town of District, with the person or persons so notifying, for the purpose of running such line or lines – And where the line or lines between adjoining Towns or between adjoining Towns & Districts, is or are unsettled & in dispute, in such Cases, there shall be

specified on the respective plans of such Towns and Districts the several lines in contest, stating accurately & particularly the difference of such claimed lines of boundary & division, in their distance course & bearing from each other.

And be it further resolved that the Inhabitants of any of the Towns or Districts aforesaid who shall neglect to take & lodge in the Secretary's Office the plans required as aforesaid within the time above limited therefor, shall forfeit and pay to the use of the Commonwealth the sum of forty pounds; which sum shall be added to such delinquent Town's or District's proportion of the State Tax which may be granted next after the first day of June in the year 1795 aforesaid –

And it is further resolved that the Committee for the sale of the eastern lands be and hereby are directed to procure and furnish plans of Townships not incorporated & such other documents as may be necessary to form and complete a Map of the five eastern Counties commonly called the District of Maine; And the said Committee are hereby also authorized and directed to require of the Grantees & Claimants of any tracts of land in the same District to exhibit to them plans of their respective grants and claims for the purpose aforesaid.

And be it further resolved that there be inserted delineated described or specified in the several plans aforesaid the breadth of rivers, the number and reputed magnitude of ponds, the falls of water, mountains, manufactories, Mills Mines and Minerals & of what sort, Iron works & Furnaces situated in the said several Towns & Districts respectively.

And the Secretary of this Commonwealth is hereby directed to cause Copies of this Resolution to be forwarded as soon as may be to the Selectmen of the several Towns and Districts from which the plans aforesaid are above required and also to cause the same to be published in the several Newspapers in this Commonwealth.

And the Selectmen of such Towns & Districts respectively are hereby required immediately after the receipt of such Copies, to cause the Inhabitants of their several Towns & Districts to assemble & meet for the purpose of carrying into effect the foregoing resolution.

June 6, 1794

Maine Private and Special Laws, 1822, c. 112

AN ACT to cede to the United States the Jurisdiction of Dennet's Island, (so called) in Piscataqua River.

Be it enacted by the Senate and House of Representatives, in Legislature assembled, That there be, and hereby is ceded to the United States the jurisdiction over Dennet's Island, (so called) on the East side of Piscataqua River, within the State of Maine, now belonging to the United States, and occupied as a Navy Yard: *Provided, however,* That this State shall have concurrent Jurisdiction with the United States, over said Island, so far as that all civil and criminal processes, issued under the authority of this State, may be executed on any part of said Island, or in any building erected on the same; and that all persons residing thereon, not being in the military or marine service of the United States, shall be holden to do military duty in the militia of this State, in the same way and manner as if the jurisdiction had not been ceded as aforesaid.

[This Act passed February 2, 1822.]

Maine Resolves, 1826, c. 29

Resolve respecting a Bridge between Kittery and the Navy Yard Island in Piscataqua River

Resolved, That, for facilitating the intercourse between the Island occupied by the United States as a Navy Yard, and for other purposes, in Piscataqua river, and the mainland on the eastern side of said river in Kittery, in this State, the consent of this State be, and hereby is granted for the erection, by the United States, at any convenient points between said Island and the main land aforesaid, of such a bridge as, by the Government of said United States, may be deemed necessary or proper for the purposes aforesaid: *Provided, however*, That the road or passage way from said bridge to the county road in said Kittery, shall be made and opened at the expense of the said United States.

[*Approved by the Governor, February 22, 1826*]

1807 New Hampshire Laws, c. 57

An Act In Addition To An Act Entitled "An Act For Ceding To The United States Of America One Acre And Three Quarters Of An Acre Of Land, With The Fort & Lighthouse Thereon, Situate In New Castle," Passed Feby 14TH, 1791.

[Approved June 18, 1807. Original Acts, vol. 19, p. 103; recorded Acts, vol. 17, p. 48. Session Laws, June 1807, p. 44. Laws, 1815 ed., p.43; id., 1830 ed., p.40 The act referred to is printed in Laws of New Hampshire, vol.5, p. 685.]

Whereas there remains about One Acre & one half of an Acre of Land, belonging to this State, situate in said New Castle, adjoining the before mentioned land, which would be useful to and greatly accommodate the United States –

Therefore Be it Enacted by the Senate and House of Representatives in General Court convened, That the remainder of the Land at said New Castle, belonging to this State, being about one acre & one half of an Acre, more or less, be and hereby is Ceded to and Vested in the United States of America, with all the Jurisdiction thereof, which is not reserved by this Act –

Provided Nevertheless, and be it further enacted, That all writs, warrants executions and all other processes of every kind, both civil and criminal issuing under the authority of this State, or any officer thereof, may be served and executed on any part of said Land, or in any Fort or other building which now is or hereafter may be erected upon said Premises, in the same way and manner as though this Act had not been passed-and

Provided also that if the United States shall at any time make any compensation to any one of the United States for the Cession of and Land which hath been or hereafter may be made to the United States, the like compensation be made to this State for the Land ceded by this Act in Proportion to the Value thereof –

1791 New Hampshire Laws, c. 71

An Act For Ceding To The United States Of America One Acre And Three Quarters Of An Acre Of Land With The Fort And Light House Thereon Situate In New Castle –

[Passed February 14, 1791. Original Acts, vol. 12, p.93; recorded Acts, vol. 6, p. 321. Laws, 1792 ed., p. 374. See additional act of June 18, 1807.]

Be it enacted by the Senate and House of Representatives in General Court convened that one acre and three quarters of an acre of a certain neck of Land situate in New Castle on great Island at the entrance of Piscataqua River commonly called Fort point to begin at the northeasterly extremity of said point and to run southwesterly carrying the whole width of said neck of land until a line crossing said neck south forty degrees east shall complete the aforesaid acre and three of an acre of Land together with the Fort and light house thereon be and hereby are ceded to and vested in the United States of America with all the Jurisdiction thereof which is not reserved by this Act –

Provided nevertheless and be it further enacted that if the United States shall at any time neglect to keep lighted and in repair said light house the Cession aforesaid shall in that case be utterly void and of no effect-Provided also that all writs, warrants, executions and all other processes of every kind both civil and criminal issuing under the authority of this State or any officer thereof may be served and executed on any part of said land or in said Fort or any other building which now is or hereafter may be erected upon the premises aforesaid in the same way and manner as though this act

had not been passed – And provided further that if the United States shall at any time make any compensation to any one of the United States for the cession of any light house, fort or land which hath been or hereafter may be made to the United States the like compensation be made to this State for the land, fort and light house by this Act ceded in proportion to their respective values –

1820 New Hampshire Laws, c. 15

An Act For Ceding To The United States One Of The Isles Of Shoals.

[Approved June, 1820. Original Acts, vol. 26, p. 15; recorded Acts, vol. 21, p. 456. Session Laws, 1815-21, p. 267. Laws, 1824 ed., p. 205; id., 1830 ed., p. 40.]

Sec. 1. Be it enacted by the Senate and House of Representatives in General Court convened, That a certain rock or Island known by the name of White Island, being the southernmost of the Isles of Shoals off the entrance of Piscataqua River, and containing one acre more or less, be and the same hereby is ceded and vested in the United States, with all the jurisdiction thereof which is not reserved by this act.

Sec. 2. Provided nevertheless, and be it further enacted, that if the United States shall fail to erect and maintain a light-house on the said Island, the cession aforesaid shall in that case be utterly void and of no effect. Provided also, That all writs, warrants, executions and all other processes of every kind, both civil and criminal issuing under the authority of this State, or any officer thereof, may be served and executed on any part of said Island, or any building which may be erected thereon, in the same way and manner as though this act had not been passed.

Maine Private and Special Laws, 1827, c. 482

AN ACT ceding to the United States the jurisdiction of certain lands near the mouth of Piscataqua River

BE it enacted by the Senate and House of Representatives, in Legislature assembled, That there be, and hereby is ceded to the United States, the jurisdiction of the ledge of rocks, called Whale's Back; and also the ledge of rocks called Wood Island, containing about acres, both being situated near the mouth of Piscataqua river, for the purpose of erecting a Light House and any other buildings thereon, which may be found expedient by the Government of the United States: *Provided however,* That this State shall have concurrent jurisdiction with the United States in and over said territory, hereby ceded, for the purpose of executing and serving all civil and criminal process under the authority thereof.

[*Approved by the Governor, Feb. 23, 1827.*]

9 New Hampshire Laws 701 (1827)

1827, June 30.

Resolved by the Senate and House of Representatives in General Court convened, That his Excellency the Governor by and with the advice of the Council be, and is, hereby authorized to appoint two Commissioners on the part of this State, who shall have power under the direction of the Governor, and in conjunction with commissioners to be appointed on the part of the State of Maine to ascertain, survey, mark and renew the dividing line between this State and the State of Maine, in its whole extent, and to erect thereon suitable monuments to designate it as the boundary line of said States.

And be it further Resolved, That his Excellency the Governor of this State be requested to transmit a copy of this Resolution to the Governor of the State of Maine, and take such other measures as may be necessary to carry the same into immediate effect.

[Acts, vol. 24, p. 409]

9 New Hampshire Laws 943 (1828)

1828, December 16.

Resolved by the Senate and House of Representatives in General Court convened, That the report of the Commissioners, who were appointed on the part of the State of New Hampshire, pursuant to a Resolve of the Legislature, passed June 30, 1827, and who have, in conjunction with Commissioners appointed on the part of the State of Maine, ascertained, surveyed, marked and renewed the dividing line between this State and the State of Maine, as set forth in said Report, together with the surveys and accompanying documents, be deposited on file in the Secretary's office of this State. And that the dividing line as surveyed, marked out and designated by said Commissioners, be, and the same is hereby approved of, and shall, from and after the passage of this Resolution, be recognized as the true boundary line between the two States. Providing the State of Maine do approve of, and recognize the same.

[Acts, vol. 26, p. 595]

Maine Resolves, 1829, c. 30

Resolve relating to a Report of Commissioners establishing the Boundary Line between Maine and New Hampshire.

Approved February 28, 1829

Resolved, That the Governor be, and he hereby is requested to issue his Proclamation, making known to the citizens of this State the situation and course of the Boundary Line aforesaid, as ascertained and established by the Commissioners, appointed pursuant to a Resolve of this State, passed on the twentieth day of January, in the year of our Lord one thousand eight hundred and twenty seven, in conjunction with certain commissioners appointed by the State of New-Hampshire.

Maine Private and Special Laws, 1854, c. 275

An act to incorporate the
Seavey's Island Bridge Company.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

SECT. 1. Levi Prior, John Prior, Waterman K. Prior, William Tarlton, James Trefethen, Daniel Trefethen, Samuel C. Dixon, Daniel J. Prior, Cushman Prior, Charles A. Neal and Thomas H. Abrams, their associates, successors and assigns, are hereby created a body politic and corporate, by the name of the Seavey's Island Bridge Company, with power by that name to sue and be sued, to have a common seal and change the same at pleasure; to ordain, establish and put in execution any by-laws and regulations for the management of their affairs, not repugnant to the laws of this state.

SECT. 2. The said corporation shall have full power and right to build and maintain a free bridge forever, from Seavey's Island over tide waters, to the island on which is located the United States navy yard, for the convenience of the inhabitants residing on said Seavey's Island, and also for persons who may find it necessary to go there on business.

SECT. 3. Said corporation shall be liable for all damages to travelers happening through any known defect in said bridge in the same way and manner that towns are liable for defects in public highways and bridges.

SECT. 4. In case the majority of the persons named in this act should not agree and determine upon the location of said bridge, or the amount of damages the

land owners may sustain in consequence of said location, with said owners, it shall be the duty of the selectmen of the town of Kittery to determine the location of said bridge, or land damages, or both, whenever desired so to do, in writing, by the majority aforesaid.

SECT. 5. If any person or persons shall willfully and maliciously take up, remove or in any way injure any part of said bridge, or shall be known to aid or assist in any such trespass, they shall forfeit and pay to the said company or their agent double such damages as the said company or their agent shall, to the justice or the court and jury before whom the trial shall be, cause to appear that they have sustained by means of the said trespass.

[Approved March 29, 1854.]

Maine Private and Special Laws, 1863, c. 198

An act ceding jurisdiction over certain lands on Seavey island in the town of Kittery to the United States.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

Section 1. Jurisdiction is hereby granted and ceded to the United States of America over such portion of Seavey island in the town of Kittery, as may be purchased for the purpose of using the same as a part of the navy yard located in that town, and consent is hereby given to the purchase of the same by the United States; *provided always* that this state shall retain and does retain concurrent jurisdiction with the United States in and over all lands hereby ceded so far as that all civil and all criminal processes issuing under the authority of this state may be executed on said lands and in any buildings thereon, or to be erected thereon in the same way and manner as if jurisdiction had not been granted as aforesaid. *And provided* that the exclusive jurisdiction shall revert to and revest in the State of Maine whenever the said lands so ceded shall cease to be used by the United States for the purpose hereinbefore declared.

Section 2. This act shall take effect from and after the purchase of any portion of said Seavey island by the United States; the evidence of such purchase being duly recorded in the registry of deeds for the county of York.

Approved January 10, 1863.